

SECOND REGULAR SESSION

SENATE BILL NO. 1222

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ENGLER.

Read 1st time February 27, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

5328S.011

AN ACT

To amend chapter 160, RSMo, by adding thereto seven new sections relating to drug testing of construction company employees on school property, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 160, RSMo, is amended by adding thereto seven new sections, to be known as sections 160.782, 160.785, 160.788, 160.791, 160.794, 160.797, and 160.798, to read as follows:

160.782. As used in sections 160.782 to 160.797, the following terms shall mean:

(1) "Certified laboratory", a laboratory that is certified by the Substance Abuse and Mental Health Services Administration of the federal Department of Health and Human Services to engage in drug testing for federal agencies;

(2) "Confirmatory drug test", a test by a gas chromatography/mass spectrometry testing procedure of a urine specimen conducted after an initial positive drug test result;

(3) "Confirmed breath alcohol test", a second breath alcohol specimen provided by the employee fifteen minutes after the initial positive breath alcohol screening test to confirm the alcohol concentration of the four hundreds of one percent or more by weight of alcohol in the blood;

(4) "Confirmed positive breath alcohol test", a confirmed alcohol concentration of the amount of four hundreds of one percent or more by weight of alcohol in the blood;

(5) "Confirmed positive drug test result", a finding by a confirmatory test of the presence in the tested urine of any of the drugs

20 or their metabolites at or above the minimum detection level specified
21 in section 160.791;

22 (6) "Employee", a laborer, worker, mechanic, or truck driver who
23 performs work on a project as described in section 160.785;

24 (7) "Employer", a contractor, subcontractor, or agent of a
25 contractor or subcontractor that performs work on a project as
26 described in section 160.785;

27 (8) "Initial breath alcohol screening test", an initial breath
28 specimen provided by the employee to determine the weight of alcohol
29 in the blood;

30 (9) "Initial drug screening test", a test by an immunoassay
31 procedure of a urine specimen;

32 (10) "Initial positive breath alcohol screening test", an alcohol
33 concentration of the amount of four hundreds of one percent or more
34 by weight of alcohol in the blood;

35 (11) "Initial positive drug test result", a finding by an initial
36 screening test of the presence in the tested urine of any of the drugs or
37 their metabolites at or above the minimum detection level specified in
38 section 160.791;

39 (12) "Medical review officer", a licensed physician who has
40 knowledge of substance abuse disorders, laboratory testing procedures,
41 and chain-of-custody procedures and who has the necessary medical
42 training to interpret and evaluate a confirmed positive drug test result,
43 a person's medical history, and any other relevant biomedical
44 information;

45 (13) "Third-party administrator", a person contracted by an
46 employer, either directly or in cooperation with other employers or
47 organizations, to administer the drug and alcohol testing program of
48 the employer under sections 160.782 to 160.797;

49 (14) "Verified positive drug test result", a confirmed positive drug
50 test result that has been verified by a medical review officer for the
51 presence in the tested urine of any of the drugs or their metabolites at
52 or above the minimum detection level specified in section 160.791.

160.785. 1. Any entity that provides construction services under
2 contract on the property of a public or private elementary or secondary
3 school, public vocational school, or public or private junior college,
4 college, university, land grant university, or any state owned building

5 shall have in place before any work on the project commences, a drug
6 and alcohol testing program that complies with sections 160.782 to
7 160.797. An employer may contract with a third-party administrator to
8 administer the employer's drug and alcohol testing program under this
9 section.

10 2. A bidder for contracts as described in subsection 1 of this
11 section shall submit with the bid all of the following:

12 (1) A statement that the bidder has in place, before any work on
13 the project commences, a drug and alcohol testing program that
14 complies with sections 160.782 to 160.797;

15 (2) A statement from each subcontractor or agent that will be
16 performing work on the project that the subcontractor or agent has in
17 place, or will have in place before any work on the project commences,
18 a drug and alcohol testing program that complies with sections 160.782
19 to 160.797.

20 3. An employer that is required under sections 160.782 to 160.797
21 to have, but that does not have, a drug and alcohol testing program in
22 place on August 28, 2008, shall provide notice to all of its employees
23 that a drug and alcohol testing program is being implemented and may
24 not begin actual drug and alcohol testing until sixty days after the date
25 of the notice.

160.788. Before an employee is tested for the presence of drugs
2 or alcohol, an employer or third-party administrator shall provide the
3 employee with a written policy statement that contains the following:

4 (1) A statement that an employee who receives a verified positive
5 drug test result may challenge or explain the result to the medical
6 review officer within two working days after receiving notification of
7 the test result; that, if the explanation is unsatisfactory to the medical
8 review officer, the medical review officer will report the test result to
9 the employer; and that the employee may, within two working days
10 after receiving that notice, request a retest of the specimen that tested
11 positive by a certified laboratory chosen by the employee at the
12 expense of the employee;

13 (2) A statement that the employee shall be given the opportunity
14 to provide any information that he or she considers relevant to the test,
15 including identification of any prescription drugs or nonprescription
16 drugs that he or she is currently using or has recently used or any

17 other relevant medical information.

160.791. 1. An employer may not permit an employee to work on
2 a project unless the employee has tested negative for the presence of
3 drugs or alcohol in the employee's system not more than twelve months
4 preceding the date on which the employee commences work on the
5 project.

6 2. After an employee begins work on a project, the employer may
7 require the employee to submit to testing if the employer has a
8 reasonable belief, based on specific, objective, and articulable facts and
9 reasonable inferences drawn from those facts, that the employee is
10 using or has used drugs or alcohol in violation of the employer's
11 policy. Those facts and inferences may be based on any of the
12 following:

13 (1) Facts or events observed while the employee is at work, such
14 as direct observation of drug or alcohol use or of the physical
15 symptoms or manifestations of being under the influence of drugs or
16 alcohol;

17 (2) Abnormal conduct or erratic behavior of the employee while
18 at work or a significant deterioration in the employee's work
19 performance;

20 (3) A report of drug or alcohol use provided by a reliable and
21 credible source;

22 (4) Evidence that the employee has tampered with a drug test
23 during his or her employment with the employer or after receiving an
24 offer of employment with the employer;

25 (5) Evidence that the employee has used, possessed, attempted
26 to possess, distributed, or delivered drugs or alcohol while at work,
27 while on the employer's premises or on the site of the project, or while
28 operating the employer's vehicles, machinery, or equipment;

29 (6) Any other fact or event that provides a reasonable belief that
30 the employee is using or has used drugs or alcohol in violation of the
31 employer's policy.

32 3. After an employee begins work on a project, the employer
33 shall require the employee to submit to random testing. Employees
34 tested under this subsection shall be selected for random testing
35 according to objective, neutral, and nondiscriminatory criteria, and the
36 testing shall be spread out throughout the life of the project so that on

37 any given day, any given employee has an equal chance of being
38 tested. Testing under this subsection shall be conducted without prior
39 warning and the frequency of random testing shall be at an annualized
40 rate of fifty percent of the total number of employees on a job site.

41 4. An employee who under any other state or federal law is
42 required to submit to random drug and alcohol testing that is at least
43 as strict as the testing required under this section is not required to
44 submit to testing under this section.

45 5. Testing under this section shall be performed by a certified
46 laboratory selected by the employer or third-party administrator and
47 shall be conducted in accordance with scientific and technical
48 guidelines established by the Substance Abuse and Mental Health
49 Services Administration of the federal Department of Health and
50 Human Services for those certified laboratories. At a minimum, an
51 employee shall be tested for all of the following:

52 (1) Amphetamines, with the following minimum detection levels
53 constituting a positive drug test result:

54 (a) A level of one thousand nanograms per milliliter constituting
55 an initial positive drug test result;

56 (b) A level of five hundred nanograms per milliliter constituting
57 a confirmed positive drug test result;

58 (2) Barbiturates, with the following minimum detection levels
59 constituting a positive drug test result:

60 (a) A level of three hundred nanograms per milliliter
61 constituting an initial positive drug test result;

62 (b) A level of three hundred nanograms per milliliter
63 constituting a confirmed positive drug test result;

64 (3) Benzodiazepines, with the following minimum detection
65 levels constituting a positive drug test result:

66 (a) A level of three hundred nanograms per milliliter
67 constituting an initial positive drug test result;

68 (b) A level of three hundred nanograms per milliliter
69 constituting a confirmed positive drug test result;

70 (4) Cocaine metabolites, with the following minimum detection
71 levels constituting a positive drug test result:

72 (a) A level of three hundred nanograms per milliliter
73 constituting an initial positive drug test result;

74 (b) A level of one hundred fifty nanograms per milliliter
75 constituting a confirmed positive drug test result;

76 (5) Marijuana metabolites, with the following minimum detection
77 levels constituting a positive drug test result:

78 (a) A level of fifty nanograms per milliliter constituting an initial
79 positive drug test result;

80 (b) A level of fifteen nanograms per milliliter constituting a
81 confirmed positive drug test result;

82 (6) Methadone, with the following minimum detection levels
83 constituting a confirmed positive drug test result:

84 (a) A level of three hundred nanograms per milliliter
85 constituting an initial positive drug test result;

86 (b) A level of three hundred nanograms per milliliter
87 constituting a confirmed positive drug test result;

88 (7) Opiates, with the following minimum detection levels
89 constituting a positive drug test result:

90 (a) A level of two thousand nanograms per milliliter constituting
91 an initial positive drug test result;

92 (b) A level of two thousand nanograms per milliliter constituting
93 a confirmed positive drug test result;

94 (8) Phencyclidine, with the following minimum detection levels
95 constituting a positive drug test result:

96 (a) A level of twenty-five nanograms per milliliter constituting
97 an initial positive drug test result;

98 (b) A level of twenty-five nanograms per milliliter constituting
99 a confirmed positive drug test result;

100 (9) Propoxyphene, with the following minimum detection levels
101 constituting a positive drug test result:

102 (a) A level of three hundred nanograms per milliliter
103 constituting an initial positive drug test result;

104 (b) A level of three hundred nanograms per milliliter
105 constituting a confirmed positive drug test result;

106 (10) Alcohol, with an alcohol concentration of the amount of four-
107 hundredths of one percent or more by weight of alcohol in the blood
108 constituting a confirmed positive alcohol test result as determined by
109 an analysis of a breath specimen provided by the employee.

110 6. This section shall not be construed to prohibit an employer

111 from establishing and enforcing reasonable work rules relating to the
112 use, possession, distribution, or delivery of drugs or alcohol in the
113 workplace.

160.794. 1. An employee shall be given the opportunity to
2 provide to the medical review officer any information that he or she
3 considers relevant to the test, including identification of any
4 prescription drugs or nonprescription drugs that he or she is currently
5 using or has recently used or any other relevant medical information.

6 2. Within one working day after receipt of a verified positive test
7 result, the employer or third-party administrator shall inform the
8 employee of the test result, the consequences of the test result, and the
9 options available to the employee. On request, the third-party
10 administrator or medical review officer shall provide a copy of the test
11 result to the employee.

12 3. Within two working days after receiving a verified positive
13 test result, the employee may request a retest of the specimen that
14 tested positive by a certified laboratory chosen by the employee. The
15 employee shall pay the cost of any retesting requested by the employee
16 but not required by the employer, subject to reimbursement by the
17 employer if the result of the retest is negative.

18 4. If testing is conducted based on reasonable suspicion, the
19 employer shall document in writing the circumstances upon which that
20 reasonable suspicion is based and, upon request, shall provide a copy
21 of that documentation to the employee. The employer shall retain a
22 copy of that documentation for not less than one year.

23 5. Any test of an employee conducted under this section shall
24 occur immediately before, during, or immediately after the regular
25 work period of the employee. If the test is conducted during an
26 employee's regular work period, the employee shall be paid for the time
27 lost from work at the employee's hourly basic rate of pay, plus the
28 hourly contribution for health insurance benefits, vacation benefits,
29 pension benefits, and any other bona fide economic benefits payable to
30 the employee. If the test is conducted outside the employee's regular
31 work period, the employee shall be paid for the time necessary to take
32 the test, including reasonable travel time, at the employee's hourly
33 basic rate of pay. The employer shall pay the cost of all testing
34 required by the employer. The employee shall pay the cost of any

35 retesting or additional testing requested by the employee, but not
36 required by the employer, subject to reimbursement by the employer
37 if the result of the retest or additional test is negative.

38 6. Except as required or permitted under this section, any
39 information, written or otherwise, relating to the result of a test
40 conducted under this section shall remain confidential and may be
41 disclosed only as follows:

42 (1) On the specific written consent of the employee who is the
43 subject of the test. That consent shall state the name of the person who
44 is authorized to obtain the information, the purpose of the disclosure,
45 the precise information to be disclosed, and the duration of the consent
46 and shall be signed by the person authorizing the disclosure;

47 (2) On the order of a court, hearing examiner, arbitrator, or
48 other decision maker for purposes of a court proceeding,
49 administrative proceeding, grievance proceeding, or any other
50 proceeding arising out of an adverse employment action taken as a
51 result of a test conducted under this section.

 160.797. 1. An employee who refuses to submit to testing as
2 required under sections 160.782 to 160.797 or who is the subject of a
3 verified positive test result may not be permitted to work on a project
4 until the employee tests negative for the presence of drugs or alcohol
5 in his or her system. An employee who is the subject of more than one
6 verified positive test result during the life of a project may not work on
7 the project for the life of the project.

8 2. Any employer that knowingly permits an employee of the
9 employer to work on a project in violation of sections 160.782 to 160.797
10 may be fined not more than two hundred dollars or imprisoned for not
11 more than six months, or both. Each day that a violation continues is
12 a separate offense.

 160.798. The requirements of sections 160.782 to 160.797 shall not
2 apply to employers who are party to a program for drug and alcohol
3 testing, which program has been in existence since at least January 1,
4 2005, provided that such program:

5 (1) Requires the testing of substances which include those
6 substances set forth in subsection 5 of section 160.791;

7 (2) Utilizes detection levels which are at least as stringent as
8 those set forth in subsection 5 of section 160.791;

- 9 **(3) Provides for random testing and reasonable suspicion testing;**
10 **(4) Provides for review of test results by a medical review**
11 **officer;**
12 **(5) Allows the employee to have a positive test specimen**
13 **retested, at the employee's expense;**
14 **(6) Provides that an employee who tests positive or refuses to**
15 **submit to a test shall not be permitted to resume employment until he**
16 **or she tests negative for the presence of drugs or alcohol.**

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